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9
10 UNITED STATES BANKRUPTCY COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 LOS ANGELES DIVISION

13 In re:

14 Jong Uk Byun,

15 Debtor.

Case No. 2:23-bk-12747-VZ

Chapter 11

UNITED STATES OF AMERICA'S
OBJECTION TO AMENDED CHAPTER 11
PLAN

Hearing Date: December 14, 2023
Hearing Time: 11:00 a.m.
Location: Courtroom 1368
255 E. Temple St.
Los Angeles, CA 90012

21 To the Honorable Vincent P. Zurzolo, United States Bankruptcy Judge, the
22 Debtor, and all interested parties,
23

24 PLEASE TAKE NOTICE that at the time and date shown above, the United States
25 of America, on behalf of its agency the Internal Revenue Service, will, and hereby does
26 object to the 1st Amended Plan of Reorganization (Dkt. #118) filed by Jong Uk Byun
27 (“Debtor”). The basis for this objection is set forth in the attached Memorandum of
28

Points and Authorities, the pleadings and record in this case, and all other evidence properly presented to the Court.

PLEASE TAKE FURTHER NOTICE that pursuant to this court's Order Granting Motion to Approve Adequacy of Disclosure Statement (Dkt. #122) this objection is timely. The deadline for Debtor to file and serve a Motion to Confirm a Plan is November 17, 2023.

Dated: November. 2, 2023

Respectfully submitted,

E. MARTIN ESTRADA
United States Attorney
THOMAS D. COKER
Assistant United States Attorney
Chief, Tax Division

/s/ Angela N. Gill
ANGELA N. GILL
Assistant United States Attorney
Attorneys for UNITED STATES OF AMERICA

Memorandum of Points and Authorities

United States of America, on behalf of its agency the Internal Revenue Service (“IRS”), objects to the 1st Amended Plan pursuant to 11 U.S.C. § 1125 and Fed. R. Bankr. P. 3017.

I. STATEMENT OF FACTS

On May 4, 2023, Debtor filed a Chapter 11 bankruptcy petition. (Dkt. #1). On June 27, 2023, the IRS filed a proof of claim asserting a priority unsecured claim of \$4,339,620.38 and a general unsecured claim of \$272,489.90 for Debtor’s income tax liabilities. (Claim No. 4-1). On July 10, 2023, Debtor filed a motion for order disallowing claim number 4 of the IRS. (Dkt. #67). On July 11, 2023, Debtor filed a chapter 11 plan of reorganization, proposing to pay the priority claim of the IRS in the amount of \$1,877,834 with monthly payments of \$10,954.03 for a total of \$2,009,282.38. The plan did not specify the term of the monthly payments or the interest rate. (Dkt. #69). The plan proposed to pay 100% of the general unsecured claim of the IRS along with other general unsecured claim in class 2b. (Dkt. #69).

On August 3, 2023, the IRS filed an amended proof of claim asserting a priority unsecured claim of \$2,009,772.82 and a general unsecured claim of \$124,585.16 for Debtor’s income tax liabilities. (Claim No. 4-2, attached hereto as Exhibit A). On August 8, 2023, Debtor filed a voluntary dismissal/withdrawal of the motion for order disallowing claim no. 4. (Dkt. #97). On September 21, 2023, Debtor filed a 1st Amended Disclosure Statement and Plan (“amended plan”). (Dkt. #118).

II. DISCUSSION

A. The Amended Plan Does Not Provide For Interest as Required by 11 U.S.C. §511.

On August 3, 2023, the IRS filed an amended proof of claim asserting an unsecured priority claim of \$2,009,772.82 based on Debtor’s income tax liabilities.

(Exhibit A). The claim is deemed allowed. 11 U.S.C. § 502(a). The amended plan does not include interest at the statutory rate for the claim of the IRS. The bankruptcy code requires that the plan include interest under the applicable non-bankruptcy rate. 11 U.S.C. § 511(b); 26 U.S.C. § 6621(a)(2). The rate of interest on underpayments of tax is 8% effective as of October 1, 2023. See Revenue Ruling 2023-15.

https://www.irs.gov/irb/2023-37_IRB

B. The Amended Plan Has Inconsistent Treatment for the IRS Claim.

The Debtor is required to pay all pre-petition priority unsecured taxes specified in section 507(a)(8) in cash in regular installment payments within five years of the petition date. 11 U.S.C. § 1129(a)(9)(C). The priority unsecured amount of the IRS claim is \$2,009,772.82.

The amended plan has two separate proposals to pay the claim of the IRS. Page 31 of the plan lists the claim of the IRS in the amount of \$2,134,357.98. Although not specified in the amended plan, this appears to be the total of the priority unsecured claim of \$2,009,772.82 and the general unsecured claim of \$124,585.16. The amended plan proposes to pay “[I]nterest only pending refinancing within one year of the Effective Date.” (Dkt. #118, p.31). However, the rate of interest is not specified. Further the amended plan states, “Total amount to be paid shall be the amount due upon refinancing of sale after calculating interest and other allowed amounts.” (Dkt. #118, p.31). The plan proposes to make monthly payments of \$12,450.42 for an unspecified period, presumably until the property is refinanced.

By contrast, page 70 of the amended plan (Exhibit H of the amended plan) states that the IRS claim in the amount of \$1,877,834 will be paid at a rate of 7% interest, with monthly payments of \$10,954.03. (Dkt. #118, p.70). The amount of \$1,877,834 is characterized as a “balloon payment” which will be “payable 12 months from Effective Date with interest payment in prior months for no more than 12 months.”

1 The United States does not oppose the proposal to pay the claim of the IRS with a
2 balloon payment due 12 months from the Effective Date, so long as the priority claim of
3 \$2,009,772.82 is paid at the applicable statutory rate of interest at the time of
4 confirmation, which is currently 8%.

5 However, the amount of monthly payment, priority claim and rate of interest needs to
6 be accurately stated. Further, any demand for payoff from escrow or other designated
7 agent of Debtor and subsequent balloon payment, paid pursuant to the confirmed plan,
8 should be sent directly to the United States Attorney's Office at:

9 U.S. Attorney's Office – Tax Division

10 Attn: AUSA Angela N. Gill

11 300 Los Angeles St., Room 7211

12 Los Angeles, CA 90012

13 The payment shall be made payable to the "United States Treasury," and state in the
14 memo line the Debtor's name and case number.

15 **III. CONCLUSION**

16 Based on the foregoing, the United States respectfully requests that the Court deny
17 confirmation of the amended plan until the objection of the United States is resolved.

18
19 Dated: November 2, 2023

Respectfully submitted,

20 E. MARTIN ESTRADA
21 United States Attorney
22 THOMAS D. COKER
Assistant United States Attorney
Chief, Tax Division

23 /s/ Angela N. Gill
24 ANGELA N. GILL
25 Assistant United States Attorney
Attorney for the UNITED STATES OF
26 AMERICA
27
28

EXHIBIT A

Fill in this information to identify the case:

Debtor 1 JONG UK BYUN

Debtor 2
(Spouse, if filing) _____

United States Bankruptcy Court for the: CENTRAL District of CALIFORNIA

Case number 2:23-BK-12747-VZ

Official Form 410

Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?

Department of Treasury - Internal Revenue Service Creditor Number : 41526832
Name of the current creditor (the person or entity to be paid for this claim)
Other names the creditor used with the debtor _____

2. Has this claim been acquired from someone else?

☐ No
☐ Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?

Federal Rule of
Bankruptcy Procedure
(FRBP) 2002(g)

Where should notices to the creditor be sent?

Internal Revenue Service
Name
P.O. Box 7346
Number Street
Philadelphia PA 19101-7346
City State ZIP Code
Contact phone 1-800-973-0424
Contact email _____

Where should payments to the creditor be sent? (if different)

Internal Revenue Service
Name
915 2nd Avenue, M/S W244
Number Street
Seattle 98174
City State ZIP Code
Contact phone (206) 946-3107
Contact email dennis.j.thornton-wiatt@irs.gov

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. Does this claim amend one already filed?

☐ No
☒ Yes. Claim number on court claims registry (if known) 4

Filed on 06/27/2023
MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?

☒ No
☐ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☐ No
☒ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _

7. How much is the claim? \$ 2,134,357.98. Does this amount include interest or other charges?
☐ No
☒ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.

9. Is all or part of the claim secured? ☒ No
☐ Yes. The claim is secured by a lien on property.

Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☐ Other. Describe: _____

Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$ _____

Annual Interest Rate (when case was filed) _____ %
☐ Fixed
☐ Variable

10. Is this claim based on a lease? ☒ No
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? ☐ No
☒ Yes. Identify the property: See attachment

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)? ☐ No ☒ Yes. Check one:

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input checked="" type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ 2,009,772.82
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.	\$ _____

* Amounts are subject to adjustment on 04/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- ☒ I am the creditor.
☐ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 08/03/2023
MM / DD / YYYY

/s/ DENNIS THORNTON-WIATT

Signature

Print the name of the person who is completing and signing this claim:

Name	DENNIS		
	First name	Middle name	Last name
Title	Revenue Officer		
Company	Internal Revenue Service		
	Identify the corporate servicer as the company if the authorized agent is a servicer.		
Address	915 2nd Avenue, M/S W244		
	Number	Street	
	Seattle		WA 98174
	City	State	ZIP Code
Contact phone	(206) 946-3107		Email dennis.j.thornton-wiatt@irs.gov

Proof of Claim for Internal Revenue Taxes



Form 410
Attachment

Department of the Treasury/Internal Revenue Service

In the Matter of: JONG UK BYUN
3439 PADUA AVE.
CLAREMONT, CA 91711

Case Number
2:23-BK-12747-VZ

Type of Bankruptcy Case
CHAPTER 11

Date of Petition
05/04/2023

Amendment No. 1 to Proof of Claim dated 06/27/2023

The United States has the right of setoff or counterclaim. However, this determination is based on available data and is not intended to waive any right to setoff against this claim debts owed to this debtor by this or any other federal agency. All rights of setoff are preserved and will be asserted to the extent lawful.

Unsecured Priority Claims under section 507(a)(8) of the Bankruptcy Code

<i>Taxpayer ID Number</i>	<i>Kind of Tax</i>	<i>Tax Period</i>	<i>Date Tax Assessed</i>	<i>Tax Due</i>	<i>Interest to Petition Date</i>
XXX-XX-1067	INCOME	12/31/2020	11/22/2021	\$12,327.00	\$1,128.68
XXX-XX-1067	INCOME	12/31/2021	11/21/2022	\$1,876,833.00	\$119,484.14
				\$1,889,160.00	\$120,612.82

Total Amount of Unsecured Priority Claims:

\$2,009,772.82

Unsecured General Claims

Penalty to date of petition on unsecured priority claims (including interest thereon) \$124,585.16

Total Amount of Unsecured General Claims:

\$124,585.16

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 300 N. Los Angeles Street, Room 7211, Los Angeles, CA 90012

A true and correct copy of UNITED STATES OF AMERICA'S OBJECTION TO AMENDED CHAPTER 11 PLAN be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On 11/2/23, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Melody G Anderson manderson@kjfsq.com
Katrina M Brown kbrown@pskbfirm.com
Matthew L Eanet matt@eanetpc.com, sara@eanetpc.com
Barry S Glaser bglaser@salvatoboufadel.com,
gsalvato@salvatoboufadel.com;Jboufadel@salvatoboufadel.com;gsalvato@ecf.courtdrive.com
David W. Meadows david@davidwmeadowslaw.com
Kelly L Morrison kelly.l.morrison@usdoj.gov
Giovanni Orantes go@gobklaw.com, gorantes@orantes-law.com,cmh@gobklaw.com,gobklaw@gmail.com,go@ecf.inforuptcy.com;orantesgr89122@notify.bestcase.com
Matthew D. Resnik Matt@rhmfirm.com,
roksana@rhmfirm.com;rosario@rhmfirm.com;sloan@rhmfirm.com;priscilla@rhmfirm.com;rebeca@rhmfirm.com;david@rhmfirm.com;susie@rhmfirm.com;max@rhmfirm.com;russ@rhmfirm.com
Gregory M Salvato gsalvato@salvatoboufadel.com,
calendar@salvatolawoffices.com;jboufadel@salvatoboufadel.com;gsalvato@ecf.inforuptcy.com
United States Trustee (LA) ustpreion16.la.ecf@usdoj.gov

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On 11/2/23, I served the following persons and/or entities at the last known addresses in this bankruptcy se or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Debtor Jong Uk Byun 3439 Padua Ave. Claremont, CA 91711	Giovanni Orantes Orantes Law Firm PC 3435 Wilshire Blvd 27th Fl Los Angeles, CA 90010	Honorable Vincent P. Zurzolo 255 E. Temple Street, Suite 1360 Los Angeles, CA 90012
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☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on 11/2/23, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

11/2/23

Date

Maria Luisa Parcon

Printed Name

/s/Maria Luisa Parcon

Signature